

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-12306-MLW

KENNETH AND PAMELA PRICE JEAN,  
Plaintiffs

vs.

CITY OF ASHBURNHAM POLICE  
DEPARTMENT, CITY OF WINCHENDON  
POLICE DEPARTMENT,  
ROB HARRINGTON, in his capacity as  
CHIEF OF THE WINCHENDON POLICE  
DEPARTMENT, JACK MURRY, in his capacity  
as CHIEF OF THE ASHBURNHAM POLICE  
DEPARTMENT, TODD C. PARSONS,  
RAYMOND M. ANAIR, ROBERT BRENNON,  
WILLIAM P. GEOFFROY, BRIAN HART,  
KEVIN AHEARN, KEVIN E. WOLSKI  
OFFICER JOHN DOE, OFFICER JOHN DOE,  
Defendants

**DEFENDANT, WILLIAM P. GEOFFROY, KEVIN E. WOLSKI AND  
ROB HARRINGTON'S, OPPOSITION TO PLAINTIFFS' MOTION  
FOR LEAVE TO FILE AMENDED COMPLAINT**

NOW COME the defendants, William P. Geoffroy, Kevin E. Wolski and Rob Harrington (hereinafter "individual Winchendon defendants"), and oppose the plaintiff's motion for leave to amend their complaint so as to add counts against the individual Winchendon defendants. As grounds therefor and in support thereof, the defendants state as follows:

The plaintiffs seek to amend their complaint by adding two counts, both of which sound in negligence against the individual Winchendon defendants. Such claims may, however, only be brought pursuant to M.G.L. c. 258, the so-called Massachusetts Torts Claims Act, which

authorizes recovery against a public employer for the negligent or wrongful acts of public employees. See, M.G.L. c. 258, § 2.

Chapter 258 state, in pertinent part:

The remedies provided by this chapter shall be exclusive of any other civil action or proceeding by reason of the same subject matter against a public employer or, the public employee whose negligent or wrongful act or omission gave rise to such claim, and no such public employee ... shall be liable for any injury or loss of property or personal injury or death caused by his negligent or wrongful act or omission while acting within the scope of his office or employment.

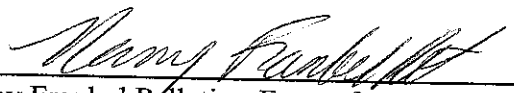
M.G.L. c. 258, § 2.

At all times material hereto, according to the allegations in the complaint, the individual Winchendon defendants were alleges to have been acting within the scope of their employment by the defendant, Town of Winchendon. As such, M.G.L. c. 258, § 2 prohibits the imposition of liability against them.

While the defendants recognize that generally speaking, Fed. R. Civ. P. 15 allows for liberal amendment of pleadings, such is not the case when amendments would prove futile.

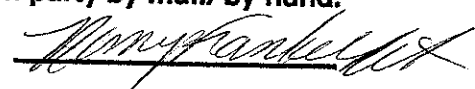
WHEREFORE, based upon the foregoing, the defendants, William P. Geoffroy, Kevin E. Wolski and Rob Harrington, respectfully request that the Plaintiff's Motion to Amend be denied.

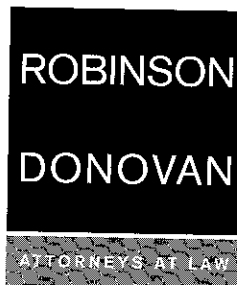
THE DEFENDANTS  
WILLIAM P. GEOFFROY, KEVIN E.  
WOLSKI AND ROB HARRINGTON

By   
Nancy Frankel Pelletier, Esq., of  
Robinson Donovan, P.C.  
1500 Main Street, Suite 1600  
Springfield, Massachusetts 01115  
Phone (413) 732-2301 Fax (413) 785-4658  
BBO No.: 544402

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party by mail/by hand.

Date: 5/21/04 



Nancy Frankel Pelletier, Esq.

(413) 732-2301 ext. 142  
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May 21, 2004

Dennis O'Leary, Courtroom Clerk  
United States District Court  
District of Massachusetts  
John Joseph Moakley-U. S. Courthouse  
One Courthouse Way, Room 5110  
Boston, MA 02210

RE: Kenneth and Pamela Price Jean v. City of Ashburnham  
Police Department, et. als.  
Civil Action No.: 03-12306-MLW

Dear Mr. O'Leary:

Enclosed herewith for filing in connection with the above-captioned matter, please find the Defendants, William P. Geoffroy, Kevin E. Wolski and Rob Harrington's, Opposition to Plaintiff's Motion for Leave to File Amended Complaint. Thank you for your attention to this matter.

Should you have any questions, please feel free to call.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nancy Frankel Pelletier".

Nancy Frankel Pelletier

NFP:stk

Enclosure

cc: Andrew M. Fischer, Esq.  
John J. Cloherty, III, Esq.  
Michael J. Akerson, Esq.  
Austin M. Joyce, Esq.  
John V. Vigliotti, Esq.  
Regina M. Ryan, Esq.  
Maureen MacDonald

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